

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 08-10971-RGS

MIGUEL RODRIGUEZ
v.

UNITED STATES OF AMERICA

MEMORANDUM AND ORDER ON
PETITIONER'S MOTION TO VACATE, SET ASIDE
OR CORRECT SENTENCE

October 21, 2008

STEARNS, D.J.

On April 30, 2008, Miguel Rodriguez filed a motion to vacate, set aside, or correct his sentence. The court has already denied two motions to vacate filed by the petitioner. See Rodriguez v. United States, Civil Action No. 00-10051-RGS (denying petition asserting ineffective assistance of counsel on the merits); Rodriguez v. United States, Civil Action No. 06-10027-RGS (denying untimely and improper second and successive petition with prejudice).

Rodriguez attempts to avoid the one-year limitations period imposed by 28 U.S.C. § 2255 by arguing that under Mayle v. Felix, 545 U.S. 644 (2005), the instant petition relates back to the originally-filed petition. This is not the case. In Mayle, the Supreme Court made clear that an amended petition does not relate back to an earlier-filed petition merely because the newly asserted claims “stem[] from the habeas petitioner’s trial, conviction, or sentence.” Id. at 656-657. Rather, both the original and the new claims must be “tied to a common core of operative facts.” Id. at 664. While Rodriguez’s original petition asserted claims for ineffective assistance of counsel, his current petition raises

claims of actual and factual innocence, as well as a never before raised jurisdictional argument. Because the new claims are not tied to the facts asserted in the original petition, there is no relation back. Id.

The motion is not only untimely; it is also a second or successive petition forbidden by 28 U.S.C. § 2255(h). See Trenkler v. United States, 536 F.3d 85, 99 (1st Cir. 2008) (a second or successive petition is foreclosed without prior permission obtained from the Court of Appeals). The motion is therefore DENIED and the petition is DISMISSED with prejudice.

SO ORDERED.

/s/ Richard G. Stearns

UNITED STATES DISTRICT JUDGE